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The Appeal Process and Ontario's Information and Privacy Commissioner



August 1999

How long does the appeal take?

It depends on a number of factors, including the nature and amount of requested information, the types of exemptions claimed, the particular process selected for your appeal and the willingness of you and the government organization to work towards settling the appeal.

Simpler appeals can be resolved within a few weeks, while more complex ones take longer. If your file is resolved through Mediation, this would normally not take any longer than a couple of months, and the majority of files that require an Inquiry are completed within four months.

If I have more questions, who can answer them?

If you have any questions about the appeal process or about Ontario's access and privacy legislation, please call the IPC and ask to speak with a Case Review Analyst.

About the Commissioner

The Information and Privacy Commissioner is appointed by the Ontario Legislature and is independent of the government of the day.

Other brochures available from the IPC:

- Access to Information under Ontario's Information and Privacy Acts*
- Your Privacy and Ontario's Information and Privacy Commissioner*
- A Mini Guide to Ontario's Freedom of Information and Protection of Privacy Act*
- A Mini Guide to Ontario's Municipal Freedom of Information and Protection of Privacy Act*

For more information, call or write:

Information and Privacy Commissioner/Ontario
80 Bloor Street West, Suite 1700
Toronto, Ontario M5S 2V1
Telephone: (416) 326-3333 • 1-800-387-0073
Facsimile: (416) 325-9195 • TTY: (416) 325-7539
Web site: <http://www.ipc.on.ca>

Cette publication est également disponible en français.

What does the Adjudicator do?

The Adjudicator proceeds to conduct an inquiry by preparing Notices of Inquiry and sending them to the parties one at a time. The parties include you, the government organization and any others involved in the appeal. The Notices of Inquiry set out the issues the Adjudicator feels need to be resolved in order to dispose of the appeal.

What kind of Inquiry is held?

Normally, inquiries are conducted in writing, and in most cases all parties are given an opportunity to submit written representations on the issues raised in the Notices of Inquiry. This is your opportunity to let the Adjudicator know how you feel about the appeal, and why you disagree with the government organization's decision. The more specific your representations, the more helpful they are to the Adjudicator. Representations must be received by the date stipulated in the notice.

Are the representations shared?

Each party's representations will be shared with the other parties to the appeal, unless there is an overriding confidentiality concern. When submitting your representations, you must indicate which portions of your representations you wish to be withheld, and explain the reasons for your request.

Are all parties able to submit representations?

The Adjudicator may decide not to seek representations from a party, in the event that the Adjudicator decides that the appeal should be resolved in favour of that party.

How is the Inquiry completed?

Once the Adjudicator has considered all representations and reviewed the records, he or she will then decide how each issue should be resolved and prepare a written order. Where the Adjudicator does not agree with the government organization's original decision, some of the things he or she may order are:

- the release of some or all of the records;
- the modification or waiver of a fee;
- correction of your personal information.

All orders include reasons, and are sent by mail to you and the other parties to the appeal.

Introduction

Ontario's *Freedom of Information and Protection of Privacy Act* and *Municipal Freedom of Information and Protection of Privacy Act* (the *Acts*) give you the right to request access to government-held information, including information about you.

However, the *Acts* also permit a government organization to refuse access to certain types of information (e.g. the personal information of other individuals). In such cases, you may find the decision to be acceptable. If you do not, then the appeal process is something you may want to learn more about.

The following are answers to questions most frequently asked about the appeal process.

I'm not satisfied with the government organization's response to my access request. What do I do?

You have the right of appeal to the Office of the Information and Privacy Commissioner (IPC).

What is an appeal?

An appeal is a way to ask for a review of a government organization's response to your request.

Do I have to pay to make an appeal?

Yes, in most cases. If you requested access to your personal information or correction of your personal information, the appeal fee is \$10. The appeal fee related to any other request for information is \$25. The correct fee must accompany your appeal and may be paid by cheque or money order, payable to "THE MINISTER OF FINANCE."

If you did not make a request and are appealing a government organization's decision to release your personal information or information in which you have an interest (see (f) below), you do not have to pay an appeal fee.

Why would I appeal?

There are a number of reasons why you might decide to appeal:

(a) you have been denied access to some or all of the information you requested;

- (b) you do not agree with the amount of the fees being charged;
- (c) you did not receive a response to your request for information (a government organization has 30 days from the date your request was received in which to respond);
- (d) you have been advised that an extension of the 30-day time period is necessary and you do not agree with the reason for the extension (the *Acts* give government organizations the right to ask for a reasonable amount of extra time in which to respond to your request);
- (e) your request for a correction of your personal information has been denied;
- (f) someone is requesting your personal information — or information in which you have an interest — from a government organization; the government organization has decided to release the information and you disagree with the decision.

How do I appeal?

Within 30 days of receiving a decision from the government organization:

- write a letter to the IPC describing the circumstances of your case. Be sure to include all relevant information, such as the name of the government organization and the file number it has assigned to your request;
- attach a copy of the government organization's response to you;
- include a copy of your request, if it's available;
- include the appeal fee.

Consider including your telephone number, as this will assist IPC staff to contact you.

If you are appealing a decision that "no records exist," you must tell the IPC why you think the records exist.

Is my appeal automatically accepted?

The Registrar reviews the appeal letter to determine how your particular file should be processed. You may be contacted by a Case Review Analyst to obtain more information or documentation, explain the appeal process or redirect you to other government organizations if they are in a better position to deal with your situation.

If it is clear that your appeal is not within the IPC's jurisdiction, it may be dismissed by the Case Review Analyst.

Experience has also taught us some cases do not warrant the full appeal process. The Registrar and Case Review Analysts also have authority to dismiss cases that fall into this category.

Assuming my appeal proceeds, what happens next?

You will receive a written confirmation, which outlines the process the Registrar has decided is the most appropriate for your case. Our goal is to maximize the proportion of appeals resolved informally, so most files are streamed to Mediation. However, in some cases appeals will be forwarded directly to Adjudication.

What is mediation?

Mediation is the process by which the IPC tries to help you and the government organization either to reach a full settlement or to simplify the appeal. Mediation can succeed in settling some or all of the issues, reducing the number of records in dispute, clarifying the issues and helping the parties to better understand the *Acts*.

How does mediation work?

Successful mediation requires the commitment of all parties, and the role of the Mediator is to help build this commitment and to facilitate discussion and negotiation. You can help by approaching mediation with an open mind and a willingness to listen to the views of the other parties, and a commitment to be flexible in order to reach a compromise. The Mediator needs all relevant information you have which relates to the appeal — things like copies of your correspondence and an understanding of the precise type of information you have requested.

If mediation is unsuccessful, what next?

In the majority of cases, mediation is successful. In situations where mediation is not completely successful, you will receive a Mediator's Report, which summarizes what has happened on your file and identifies the issues that have not been resolved. After you have had a chance to review the Mediator's Report, it is forwarded to the Adjudication Stage.